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January 19, 2021

The Honorable Norman K. Moon  
United States District Court  
Western District of Virginia  
255 West Main Street  
Charlottesville, VA 22902

*Re: Sines v. Kessler et al.*, No. 3:17-cv-00072 (NKM)(JCH)

Dear Judge Moon:

We write to address certain issues the Court raised at oral argument held on December 17, 2020 in connection with Defendants' Motion to Exclude Expert Testimony (ECF 826).

First, at the December 17 oral argument, the Court invited defense counsel to file with the Court a list of the specific items to which he was objecting in connection with the expert report of Kathleen Blee and Pete Simi. *See* 12/17/20 Hearing Tr. at 14. To date, however, Plaintiffs are not aware that Mr. Kolenich has filed any such list. The Court may wish to set a deadline for this submission so that the issues can be clarified, and the motion can be decided.

Second, during the oral argument on December 17, Your Honor noted that the cases where experts were permitted to testify about Islamic extremism were "more appropriate here." 12/17/20 Hearing Tr. at 34. As a result, we went back and pulled the expert report in one of those cases within the Fourth Circuit, *United States v. Hassan*, 742 F.3d 104 (4th Cir. 2014). The expert witness in that case was an "International Terrorism Consultant" who, like Blee and Simi, reviewed the evidence gathered in that case and was permitted by the Court to testify about the "meaning and context of various words and phrases used by the defendants which are commonly used by persons practicing extreme Islam; the structure and leadership of groups adhering to the principles of Islamic extremism; and the manner and means employed by extremist Islamic groups to recruit individuals and the process of radicalization which occurs within such groups." *Hassan*, 742 F.3d at 130-131 (internal quotations omitted). A copy of the 63-page expert report submitted at the trial level in *Hassan* is attached as Exhibit 1 for the Court's reference. The specific opinions proffered by the expert in that report that are analogous to the opinions Plaintiffs would like to introduce through the testimony of Blee and Simi are as follows:

- The expert defined a "general objective profile of a prototypical 'homegrown' terrorist network" (p. 5)

- The expert defined five “principle relevant factors as to whether a person or persons might fit the profile of a ‘homegrown’ terrorist network” (p. 5), including, for example, “The Use of Coded Language and Attempts at Logistical Subterfuge (i.e. Attempts to Secret or Hide One’s Activities)” and “The Deliberative Collection and Redistribution of Large Quantities of Terrorist Propaganda”
- The expert concluded, “The fringe jihadi philosophy that is strongly reflected by the evidence gathered in the present case is a common characteristic of contemporary violent extremist networks. . . .” (p. 20)
- The expert discussed the “Islamic Thinkers Society (ITS),” which “insists that it advocates ‘intellectual’ and ‘political’ struggle,” and opined that in fact, “despite this apparent disclaimer, the ITS has repeatedly engaged in activities that are explicitly designed (and are quite likely) to incite violence,” and stated that at least one defendant’s computer contained links to the ITS (pp. 37-38)
- The expert further explained, “Throughout the evidence in the present case provided to me by the U.S. Attorney’s Office, there are strong indicators of attempts at evading law enforcement and logistical subterfuge through the use of word substitutions and coded language. As confirmed by the account of [Defendant] Boyd, the defendants were aware of the risk that their communications would be intercepted and took precautions designed to muddle the precise meaning of their words.” (p. 38)
- The expert opined, “Upon reviewing the evidence assembled in the present case, I have concluded that there is a high probability that the defendants fit the profile of terrorists, and that there is a high probability of the existence of a genuine ‘homegrown’ terror network. I draw particular attention to the formidable arsenal of weapons already in the possession of defendants Daniel Boyd et al., along with the disturbing sense of imminence in the conversations of co-conspirators regarding the use of deadly force. These are typically considered to be among the final warning signs prior to the execution of a would-be terrorist attack.” (p. 59)

Referencing another Fourth Circuit case where the testimony of the same expert was allowed, the Court in *Hassan* held that such testimony would assist the trier of fact because the trial evidence was “complicated, touching by necessity on a wide variety of ideas, terms, people, and organizations connected to radical Islam.” *Hassan*, 742 F.3d at 131 (quoting *United States v. Benkahla*, 530 F.3d 300, 309 (4th Cir.2008)). This particular expert in Islamic extremism has testified as an expert on at least 30 occasions, including multiple times within the Fourth Circuit. See Ex. 1 at 3-4. While Plaintiffs reiterate that Blee & Simi will not opine as to the existence of a conspiracy, courts have found that expert testimony like theirs regarding certain distinctive techniques of particular groups can be relevant and admissible in a conspiracy case.

Third and finally, it bears noting that recent events have only highlighted the use of coded language by domestic extremist groups like the defendants in this case to achieve violent ends. As detailed in the attached article regarding the use of “far-right symbols that appeared at the U.S. Capitol riot,” many participants in the violent attacks of January 6, 2021 utilized symbolism well-known to “insiders” within extremist groups to convey certain beliefs or affiliations that remain obscure to untrained observers. Ex. 2. Because of the prevalence of this type of “double-

speak” that endures within white supremacist culture, it would be helpful to a jury to have such communications decoded by experts like Blee and Simi.

Dated: January 19, 2021

Respectfully submitted,

/s/ Michael L. Bloch

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I further hereby certify that on January 19, 2021, I also served the following non-ECF participants, via electronic mail, as follows:

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